

House File 626 - Introduced

HOUSE FILE 626

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HSB 226)

A BILL FOR

1 An Act relating to the collection of sales and use tax in this
2 state, including retailers maintaining a place of business
3 in this state, agreements relating to the collection of
4 sales and use taxes, sales of tangible personal property and
5 services to the state, related reporting requirements, and
6 the transfer of certain sales and use tax revenues to the
7 taxpayers trust fund.
8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 423.1, subsection 48, Code 2013, is
2 amended to read as follows:

3 48. a. "Retailer maintaining a place of business in this
4 state" or any like term includes any retailer having or
5 maintaining within this state, directly or by a subsidiary,
6 an office, distribution house, sales house, warehouse, or
7 other place of business, or any representative operating
8 within this state under the authority of the retailer or its
9 subsidiary, irrespective of whether that place of business or
10 representative is located here permanently or temporarily, or
11 whether the retailer or subsidiary is admitted to do business
12 within this state pursuant to chapter 490.

13 b. (1) A retailer shall be presumed to be maintaining a
14 place of business in this state, as defined in paragraph "a", if
15 any person that has substantial nexus in this state, other than
16 a person acting in its capacity as a common carrier, does any
17 of the following:

18 (a) Sells a similar line of products as the retailer and
19 does so under the same or similar business name.

20 (b) Maintains an office, distribution facility, warehouse,
21 storage place, or similar place of business in this state to
22 facilitate the delivery of property or services sold by the
23 retailer to the retailer's customers.

24 (c) Uses trademarks, service marks, or trade names in this
25 state that are the same or substantially similar to those used
26 by the retailer.

27 (d) Delivers, installs, assembles, or performs maintenance
28 services for the retailer's customers.

29 (e) Facilitates the retailer's delivery of property to
30 customers in this state by allowing the retailer's customers to
31 take delivery of property sold by the retailer at an office,
32 distribution facility, warehouse, storage place, or similar
33 place of business maintained by the person in this state.

34 (f) Conducts any other activities in this state that
35 are significantly associated with the retailer's ability

1 to establish and maintain a market in this state for the
2 retailer's sales.

3 (2) The presumption established in this paragraph may be
4 rebutted by a showing of proof that the person's activities in
5 this state are not significantly associated with the retailer's
6 ability to establish or maintain a market in this state for the
7 retailer's sales.

8 Sec. 2. Section 423.2, subsection 11, paragraph b, Code
9 2013, is amended by adding the following new subparagraph:
10 NEW SUBPARAGRAPH. (6) Transfer to the taxpayers trust fund
11 created in section 8.57E that portion of the sales tax revenue
12 specified in section 423.36, subsection 9, that remains after
13 the other transfers required under this paragraph "b".

14 Sec. 3. NEW SECTION. **423.13A Administration —**
15 **effectiveness of agreements with retailers.**

16 1. Notwithstanding any provision of this chapter to the
17 contrary, any ruling, agreement, or contract, whether written
18 or oral, express or implied, entered into after the effective
19 date of this Act between a retailer and a state agency that
20 provides that a retailer is not required to collect sales and
21 use tax in this state despite the presence in this state of
22 a warehouse, distribution center, or fulfillment center that
23 is owned and operated by the retailer or an affiliate of the
24 retailer shall be null and void unless such ruling, agreement,
25 or contract is approved, by resolution, by a majority vote of
26 each house of the general assembly.

27 2. For purposes of this section, "*state agency*" means
28 the executive branch, including any executive department,
29 commission, board, institution, division, bureau, office,
30 agency, or other entity of state government. "*State agency*"
31 does not mean the general assembly, or the judicial branch as
32 provided in section 602.1102.

33 Sec. 4. Section 423.36, Code 2013, is amended by adding the
34 following new subsections:

35 NEW SUBSECTION. 1A. a. Notwithstanding subsection 1,

1 if any person will make taxable sales of tangible personal
 2 property or furnish services to any state agency, that person
 3 shall, prior to the sale, apply for and receive a permit
 4 to collect sales or use tax pursuant to this section. A
 5 state agency shall not purchase tangible personal property
 6 or services from any person unless that person has a valid,
 7 unexpired permit issued pursuant to this section and is in
 8 compliance with all other requirements in this chapter imposed
 9 upon retailers, including but not limited to the requirement to
 10 collect and remit sales and use tax and file sales and use tax
 11 returns.

12 **b.** For purposes of this subsection, "*state agency*" means
 13 any executive, judicial, or legislative department, commission,
 14 board, institution, division, bureau, office, agency, or other
 15 entity of state government.

16 NEW SUBSECTION. 9. For all permits issued on or after the
 17 effective date of this Act except permits issued pursuant to
 18 subsection 8, the department shall determine whether or not the
 19 applicant's requirement to obtain the permit arose exclusively
 20 from an activity described in section 423.1, subsection 48,
 21 paragraph "b". In those cases where the permit requirement
 22 did arise exclusively from such activity, the department shall
 23 transfer all sales or use tax revenues collected and remitted
 24 by the permit holder that relate to the permit to the taxpayers
 25 trust fund created in section 8.57E, as provided in section
 26 423.2, subsection 11, paragraph "b", and section 423.43,
 27 subsection 1, paragraph "b".

28 Sec. 5. Section 423.43, subsection 1, paragraph b, Code
 29 2013, is amended to read as follows:

30 **b.** Subsequent to the deposit into the general fund of the
 31 state ~~and after the transfer of such~~ department shall do the
 32 following in the order prescribed:

33 (1) Transfer the revenues collected under chapter 423B, ~~the~~
 34 ~~department shall transfer.~~

35 (2) Transfer one-sixth of such remaining revenues to the

1 secure an advanced vision for education fund created in section
2 423F.2. This ~~paragraph~~ subparagraph is repealed December 31,
3 2029.

4 (3) Transfer to the taxpayers trust fund created in section
5 8.57E that portion of the use tax revenue specified in section
6 423.36, subsection 9, that remains after the other transfers
7 required under this paragraph "b".

8 Sec. 6. SALES AND USE TAX REPORT.

9 1. Not later than sixteen months after the occurrence
10 of both the enactment of a federal law authorizing states to
11 impose a sales and use tax collection requirement on remote
12 sellers and the exercise of that authority by this state, the
13 department of revenue shall issue a report to the general
14 assembly containing data and information on the following:

15 a. The amount of sales and use tax collected in this state
16 from remote sellers for the twelve-month period beginning on
17 the date such collection requirement was first imposed in this
18 state.

19 b. An estimate of the projected sales and use tax revenue
20 that will be collected from remote sellers for the fiscal year
21 beginning July 1 following the date such collection requirement
22 was first imposed in this state, and for four fiscal years
23 thereafter.

24 c. An estimate of the sales and use tax rate that will be
25 necessary for this state to maintain for future fiscal years an
26 amount of sales and use tax revenue equal to the average sales
27 and use tax revenue of this state for the five fiscal years
28 prior to the fiscal year in which this state first imposed a
29 collection requirement on remote sellers.

30 d. Any other information deemed necessary by the department
31 of revenue.

32 2. For purposes of this section, "remote seller" means
33 a seller who would not have a sales or use tax collection
34 obligation in this state but for the authorization under
35 federal law for this state to require such seller to collect

1 sales or use tax. "Remote seller" does not include a seller
2 who voluntarily registered under the streamlined sales and use
3 tax agreement before the date of enactment of a federal law
4 authorizing states to impose a sales and use tax collection
5 obligation on remote sellers.

6 EXPLANATION

7 This bill relates to the collection of sales and use taxes in
8 this state, including retailers maintaining a place of business
9 in this state, agreements relating to the collection of sales
10 and use taxes, sales of tangible personal property and services
11 to state agencies, related reporting requirements, and the
12 transfer of certain sales and use tax revenues to the taxpayers
13 trust fund.

14 A retailer located in this state, or maintaining a place of
15 business in this state, must collect and remit sales and use
16 taxes to the department of revenue. Currently, as defined in
17 Code section 423.1, the term "retailer maintaining a place of
18 business in this state" includes certain places of business,
19 and representatives operating under the authority of the
20 retailer.

21 The bill provides that a retailer will be presumed to be
22 maintaining a place of business in this state if any person
23 that has substantial nexus in this state, other than a common
24 carrier, engages in any of six activities specified in the
25 bill. The presumption may be rebutted by a showing of proof
26 that the person's activities are not significantly associated
27 with the retailer's ability to establish or maintain a market
28 in this state for the retailer's sales.

29 The bill provides that for all sales and use tax permits
30 issued on or after the effective date of the bill, the
31 department of revenue shall determine whether or not the permit
32 requirement arose exclusively from one of the six activities
33 specified in the bill. If such permit requirement did arise
34 exclusively from one of the activities, the department of
35 revenue shall transfer all sales or use tax revenues collected

1 and remitted by the permit holder and that relate to the permit
2 to the taxpayers trust fund created in Code section 8.57E,
3 after various other transfers already required in the Code.

4 The bill provides that any ruling, agreement, or contract
5 entered into after the effective date of the bill between a
6 retailer and a state agency that provides that a retailer is
7 not required to collect sales and use tax in this state despite
8 the presence in this state of a warehouse, distribution center,
9 or fulfillment center owned and operated by the retailer or
10 an affiliate shall be null and void unless it is specifically
11 approved, by resolution, by a majority vote of each house of
12 the general assembly. For purposes of this provision of the
13 bill, "state agency" does not include the general assembly or
14 the judicial branch.

15 The bill provides that a person shall not make taxable sales
16 or furnish taxable services to a state agency unless that
17 person obtains a sales or use tax permit. Also, the state is
18 prohibited from purchasing taxable property or services from
19 any person unless that person has a valid, unexpired sales or
20 use tax permit and is in compliance with all other sales and
21 use tax laws imposed upon retailers. For purposes of this
22 provision of the bill, "state agency" includes the executive
23 branch, the general assembly, and the judicial branch.

24 The bill requires the department of revenue to file a report
25 with the general assembly not later than 16 months after the
26 occurrence of both the enactment of a federal law authorizing
27 the state to require remote sellers to collect sales and use
28 tax and the exercise of that authority by the state. The
29 report shall contain various data and information as specified
30 in the bill relating to the amount of sales and use tax
31 collected from remote sellers, estimates of future sales and
32 use tax collections from remote sellers, and an estimate of
33 the sales and use tax rate necessary to maintain for future
34 fiscal years the average amount of sales and use tax collected
35 before the state first imposed a collection requirement on

1 remote sellers. "Remote seller" is defined as a seller that
2 would not have a sales or use tax collection requirement in
3 this state but for the ability of this state to require the
4 seller to collect sales or use tax under federal law, but does
5 not include any seller that voluntarily registered under the
6 streamlined sales and use tax agreement prior to the enactment
7 of such federal law.